

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

CHARLES DENHAM, Derivatively on Behalf  
of TIVITY HEALTH, INC.,

Plaintiff,

v.

DONATO TRAMUTO, ADAM HOLLAND,  
GLENN HARGREAVES, KEVIN G. WILLS,  
BRADLEY S. KARRO, PAUL H. KECKLEY,  
CONAN J. LAUGHLIN, ROBERT GRECZYN,  
LEE A. SHAPIRO, ARCHELLE GEORGIOU,  
PETER HUDSON, and MARY JANE  
ENGLAND,

Defendants,

- and -

TIVITY HEALTH, INC., a Delaware  
Corporation,

Nominal Defendant.

Case No.: 3:18-cv-00087

**STIPULATION CONSOLIDATING  
ACTION, APPOINTING LEAD  
COUNSEL, AND RELATED MATTERS  
AND [PROPOSED] ORDER**

Chief Judge Crenshaw  
Magistrate Judge Newbern

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ANDREW H. ALLEN, Derivatively and on  
Behalf of the Nominal Defendant TIVITY  
HEALTH, INC.,

Plaintiff,

v.

DONATO TRAMUTO, ADAM HOLLAND,  
GLENN HARGREAVES, MARY JANE  
ENGLAND, ARCHELLE GEORGIOU, M.D.,  
ROBERT J. GRECZYN, JR., PETER  
HUDSON, M.D., BRADLEY S. KARRO,  
CONAN J. LAUGHLIN, LEE A. SHAPIRO,  
PAUL H. KECKLEY, PH.D., AND KEVIN G.  
WILLS,

Defendants,

- and -

TIVITY HEALTH, INC.,

Nominal Defendant.

Case No. 3:18-cv-00797

Judge Aleta A. Trauger

WHEREAS, there are currently two related shareholder derivative actions (the "Related Derivative Actions") brought on behalf of Tivity Health, Inc. ("Tivity" or the "Company") pending in this Court;

WHEREAS, in an effort to assure consistent rulings and decisions and the avoidance of unnecessary duplication of effort, all of the counsel for the parties in the Related Derivative Actions enter into this stipulation. The counsel are: (1) Robbins Arroyo LLP and Davies, Humphreys & Reese PLC on behalf of plaintiff Charles Denham ("Plaintiff Denham"); (2) Scott+Scott Attorneys at Law LLP and Pepper Law, PLC on behalf of plaintiff Andrew H. Allen ("Plaintiff Allen"); and (3) Bass, Berry & Sims PLC and King & Spalding LLP on behalf of Defendants;

WHEREAS, on January 26, 2018, Plaintiff Denham commenced the above-captioned shareholder derivative action, Case No. 3:18-cv-00087, on behalf of Tivity ("Denham Action");

WHEREAS, on February 22, 2018, per the parties' stipulation, the Court temporarily stayed the Denham Action pending entry of an order resolving a motion to dismiss filed in the related securities class action, captioned *Weiner v. Tivity Health, Inc., et al.*, Case No. 3:17-cv-01469, which is also proceeding in this Court ("Securities Action");

WHEREAS, the parties to the Securities Action are currently briefing the motion to dismiss, with the defendants' reply brief due by October 9, 2018;

WHEREAS, on August 24, 2018, after reviewing and analyzing documents obtained pursuant to 8 Del. C. § 220, among other things, Plaintiff Allen commenced the above-captioned shareholder derivative action, Case No. 3:18-cv-00797, on behalf of Tivity ("Allen Action");

WHEREAS, the parties agree that the Denham Action and Allen Action are related and should be consolidated, as both actions involve common questions of law and fact and seek similar relief;

WHEREAS, the parties agree that the stay of the Denham Action should be lifted for the limited purpose of consolidating the Denham Action with the Allen Action and appointing co-lead counsel to assure efficiency, consistent rulings and to avoid unnecessary duplication of effort; and

WHEREAS, Defendants take no position on the appointment of co-lead counsel.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties, through their respective counsel of record, as follows:

1. The stay of the Denham Action shall be lifted for the limited purposes of consolidating the Related Derivative Actions and appointing co-lead counsel (as described below).

2. The following actions are hereby related and consolidated for pre-trial proceedings:

<u>Abbreviated Case Name</u>	<u>Case Number</u>	<u>Date Filed</u>
<i>Charles Denham v. Donato Tramuto, et al.</i>	3:18-cv-00087	Jan. 26, 2018
<i>Andrew H. Allen v. Donato Tramuto, et al.</i>	3:18-cv-00797	Aug. 24, 2018

3. Every pleading filed in these consolidated actions, or in any separate action included herein, shall bear the following caption:

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

IN RE TIVITY HEALTH, INC.	)	Master Docket No. 3:18-cv-00087
STOCKHOLDER DERIVATIVE	)	
LITIGATION	)	(Consolidated with No. 3:18-cv-00797)
)		
This Document Relates To:	)	Chief Judge Crenshaw
)		

4. When a pleading or other court paper filed in the consolidated action is intended to apply to all actions therein, the words "All Actions" shall appear immediately after the words "This Document Relates To:" in the caption set forth above. When a pleading or other court paper is intended to be applicable only to one, or some, but not all of such actions, the party filing the document shall indicate the action(s) to which the document is intended to be applicable by last name of the named plaintiff(s) and the docket number(s).

5. The files of these consolidated actions shall be maintained in one file under Master Docket No. 3:18-cv-00087.

6. Pursuant to the stipulation of plaintiffs' counsel, Co-Lead Counsel for plaintiffs for the conduct of the consolidated actions are:

ROBBINS ARROYO LLP  
BRIAN J. ROBBINS  
KEVIN A. SEELY  
ASHLEY R. RIFKIN  
600 B Street, Suite 1900  
San Diego, CA 92101  
Telephone: (619) 525-3990

-and-

SCOTT+SCOTT  
ATTORNEYS AT LAW LLP  
GEOFFREY M. JOHNSON (Ohio Bar #0073084)  
12434 Cedar Road, Suite 12

Cleveland Heights, OH 44106  
Telephone: (216) 229-6088

SCOTT JACOBSEN (New York Bar # 5344452)  
The Helmsley Building  
230 Park Avenue, 17th Floor  
New York, NY 10169  
Telephone: (212) 223-6444

8. Plaintiffs' Co-Lead Counsel shall have authority to speak for plaintiffs in matters regarding pre-trial procedure, trial, and settlement negotiations and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.

9. Plaintiffs' Co-Lead Counsel shall be responsible for coordinating all activities and appearances on behalf of plaintiffs. No motion, request for discovery, or other pre-trial or trial proceedings shall be initiated or filed by any plaintiff except through plaintiffs' Co-Lead Counsel.

10. Co-Liaison Counsel for plaintiffs for the conduct of these consolidated actions is:

DAVIES, HUMPHREYS & REESE  
WADE B. COWAN (BPR #9403)  
85 White Bridge Road, Suite 300  
Nashville, TN 37205  
Telephone: (615) 256-8125

-and-

PEPPER LAW, PLC  
J. Ross Pepper (BPR#14444)  
Sara R. Ellis (BPR#30760)  
201 Fourth Avenue North, Suite 1550  
Nashville, TN 37219  
Telephone: (615) 256-4838

11. Plaintiffs' Co-Liaison Counsel shall be available and responsible for communications to and from this Court, including distributing orders and other directions from

the Court to counsel. Plaintiffs' Co-Liaison Counsel shall be responsible for creating and maintaining a master service list of all parties and their respective counsel.

12. Defendants' counsel may rely upon all agreements made with any of plaintiffs' Co-Lead Counsel, or other duly authorized representative of plaintiffs' Co-Lead Counsel, and such agreements shall be binding on plaintiffs.

13. This Order shall apply to each shareholder derivative action arising out of the same or substantially the same transactions or events as the Related Derivative Actions, which is subsequently filed in, removed to, or transferred to this Court.

14. When a case which properly belongs as part of this consolidated action, Master Docket No. 3:18-cv-00087, is hereafter filed in the Court or transferred here from another court, this Court requests the assistance of counsel in calling to the attention of the clerk of the Court the filing or transfer of any case which might properly be consolidated as part of this consolidated action, Master Docket No. 3:18-cv-00087, and counsel are to assist in assuring that counsel in subsequent actions receive notice of this Order.

15. Following the entry of this Order, this case will continue to be stayed consistent with the Order Staying Case entered on February 22, 2018, in the Denham Action, which will remain in full force and effect and be applicable to all parties of this now-consolidated action.

DATED: October 4, 2018

BRIAN J. ROBBINS\*  
KEVIN A. SEELY\*  
ASHLEY R. RIFKIN\*  
ROBBINS ARROYO LLP

*s/ Ashley R. Rifkin*  
\_\_\_\_\_  
ASHLEY R. RIFKIN

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\*admitted *pro hac vice*

*[Proposed] Co-Lead Counsel for Plaintiffs and  
Counsel for plaintiff Charles Denham*

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*[Proposed] Co-Liaison Counsel for Plaintiffs  
and Counsel for plaintiff Charles Denham*

DATED: October 4, 2018

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ATTORNEYS AT LAW LLP

s/ Geoffrey M. Johnson (with permission)

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*[Proposed] Co-Lead Counsel for Plaintiffs and  
Counsel for plaintiff Andrew H. Allen*

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*[Proposed] Co-Liaison Counsel for Plaintiffs  
and Counsel for plaintiff Andrew H. Allen*

DATED: October 4, 2018

Wallace W. Dietz (BPR # 009949)  
Joseph B. Crace, Jr. (BPR # 027753)  
BASS, BERRY & SIMS PLC

s/ Joseph B. Crace, Jr. (with permission)  
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lbugni@kslaw.com

*Attorneys for Defendants*

\* \* \*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2018:

\_\_\_\_\_  
CHIEF JUDGE CRENSHAW  
UNITED STATES DISTRICT JUDGE



**CERTIFICATE OF SERVICE**

I hereby certify that on October 4, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 4, 2018.

*s/ Ashley R. Rifkin*

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ASHLEY R. RIFKIN (*admitted pro hac vice*)  
*Attorney for Plaintiff Charles Denham*

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# Mailing Information for a Case 3:18-cv-00087 Denham v. Tramuto et al

## Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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- **Brian J. Robbins**  
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- **Kevin A. Seely**  
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## Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)